IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2097 of 1995

with

FIRST APPEAL No 2098 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SPL. LAND ACQUISITION OFFICER & 1

Versus

RAMESHBHAI DAJIBHAI PATEL

Appearance:

Mr.A.D.Oza, GP with Mr. H.C.Patel,AGP for Petitioners

MR GM AMIN for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and

MR.JUSTICE H.K.RATHOD

Date of decision: 28/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

Special Land Acquisition Officer and another, original opponents of the land acquisition case no. 519 and 520 of 1989 have challenged by way of these appeals the judgment and order dated 30th January, 1995 passed by the learned Third Joint District Judge, Ahmedabad Rural at Mirzapur. The learned Judge, by her composite judgment and order, partly allowed the reference cases by holding that the claimants of the land survey No. 568 do get Rs.57.00 per square meters and the claimants of land s.n. 566/1/2 do get Rs.50.00 per square meter for the additional compensation for their acquired lands in their respective claim petitions as stated in the schedule attached together with solatium at the rate of 30 per cent and with interest at the rate of 9 per cent per annum for a period of one year from the date of taking over possession of the acquired lands and, thereafter at the rate of 15 per cent from the expiry of that one year till the amount is paid or deposited. It is further held that the claimants are also entitled to get 12 per cent increase on the market value of the acquired lands for a period from 30.1.1988 to 17.8.1988 under section 23(1-A) of the Land Acquisition Act. The learned Judge has also awarded proportionate costs on the claim allowed.

The Executive Engineer, Express Way Division No.1 proposed by his letter dated 21.12.1987 to acquire the agricultural lands bearing survey no.568 (4309 sq.mtrs.) and survey no. 566/1/2 (843 sq. mtrs.)of village Ramol Taluka Daskroi, District Ahmedabad for the purpose of Ahmedabad-Vadodara Express Highway. Both the lands are new tenure lands. Accordingly, notification under section 4 of the Land Acquisition Act was published in the Government Gazette on 30.1.1988 and notification under sec. 6 of the Act was published on 28.3.1988. The Special Land Acquisition Officer, Express Highway, Ahmedabad fixed the marked price of the acquired lands at Rs.20.00 per square meter for the lands bearing survey no. 566/1/2 and Rs.23.00 per square meters for the lands bearing survey no. 568 and passed the award dated 17th August, 1988. The Reference under section 18 of the Act was made at the instance of the claimants wherein the claimants have prayed Rs.200.00 per sq. mtr. for their acquired lands contending inter alia that the compensation awarded by the special land acquisition

officer is less and inadequate; surrounding lands of the acquired lands were non agricultural lands and there were also construction and that their villages have a facilities of school, hospital, road, water, light etc. and the surrounding area is developed and developing area.

The opponents justified the award by filing their written statement at Exh. 10. The reference court, after appreciating the oral as well as documentary evidence on record, partly allowed the reference cases and fixed the market price of the land under acquisition as stated above. The reference court for arriving at the compensation at Rs.54.00 to Rs.57.00 per square meter, has placed reliance on the judgment Exh. 16 dated 28th June, 1993 whereby the Assistant Judge, Ahmedabad (Rural) at Mirzapur gave composite award. The land acquisition case No. 312 of 1988 and the land acquisition case no. 1225 of 1987 were two of the cases amongst other were disposed of under the said award. The land acquisition case No. 312 of 1988 includes survey no. 566/1/2 (lands under acquisition) over and above the other survey numbers while land acquisition case no. 1225 of 1987 includes the land survey no. 568 (land under acquisition). As observed earlier,the market price of those two survey numbers were fixed under award Exh. 16 ranging from Rs.54.00 to Rs.57.00 per square meters. Relying on the said earlier award, the reference court has awarded Rs.57.00 per square meter, being the compensation for the land bearing survey no. 568 and Rs.50.00 per square meters, being the compensation for the land bearing survey no. 566/1/2. It may be stated that the said award Exh. 16 was challenged by way of appeal being first appeal no. 2560 of 1995 by the present appellants. The Division Bench consisting of M.R.Calla and D.H.Waghela,JJ., by their judgment and order dated 21.3.2001 dismissed the group of appeals namely first appeal no. 2560 of 1995 to first appeal no. 2581 of 1995 and confirmed the judgment and award made by the the learned Assistant Judge, Ahmedabad (Rural) at Ahmedabad. In this view of the matter, once this court has upheld the judgment and award passed by the reference court at Exh. 16, in our opinion, the reference court was justified in relying on the judgment and award passed in the previous award i.e. Exh. 16 in fixing the compensation of the lands under acquisition. Learned Government Pleader Mr. A.D. Oza was unable to point out anything warranting us to take a different view in the matter than the view taken by the reference court. There being no substance in these appeals, same are dismissed with costs.

It is stated by Mr. Amin, learned advocate for the original claimants that the reference court has permitted 50 per cent withdrawal of the amount deposited and has ordered to deposit the remaining 50 per cent amount by way of fixed deposit receipts. Since we are dismissing the appeals, we direct the reference court to withdraw the amount deposited by way of FDR and to disburse the same to the claimants after proper verification.

Dt.28.10.2002. (Kshitij R.Vyas,J.)

(H.K.Rathod,J.)

Vyas